



**THE SUPREME COURT OF BERMUDA
PRACTICE DIRECTION**

ISSUED BY THE CHIEF JUSTICE

FIXED DATES FOR CRIMINAL CASES

The Supreme Court is experiencing difficulties in disposing of its criminal list due in part to the large number of ineffective trial fixtures. The following directions are intended to address this problem.

Fixtures

1. A fixture should be regarded as just that, and the parties should start to work towards trial the moment the date is set. A Supreme Court criminal fixture will take precedence over everything else, including civil fixtures, and the personal or business commitments of counsel or the defendant.

Adjournments

2. Should the need for an adjournment become apparent during preparation, the court and the other side should be notified forthwith. In this respect attention is drawn to Rule 60 of the Barristers' Code of Professional Conduct 1981.

3. If the need to vacate the date becomes apparent, an application should be made to the court forthwith by Notice of Motion in the proceedings¹.

4. No application for an adjournment will be entertained on the trial date, unless it is due to some reason wholly unforeseeable before then, such as sudden illness.

5. In particular, counsel should ensure that their fee arrangements are in place in good time. Counsel will not be allowed to withdraw on the day of trial, and in this respect their attention is drawn to Rule 72 of the Barristers' Code of Professional Conduct 1981. Nor should defendants be able to obtain an adjournment by failing to put their counsel in funds: a defendant seeking an adjournment on the grounds of inability to pay will have to demonstrate that he has taken all reasonable steps to put his counsel in funds or obtain legal aid.

6. The same principles apply to 'warned' dates. In particular Counsel in a warned case should ensure that he/she is available and otherwise ready for trial on that date. If a fixture has to be adjourned at the last minute, and there are warned cases for that date, the jury should be released for only as long as is necessary to bring on the warned case.

7. In any event a warned case should not be released until the trial of the preceding fixture trial has actually commenced.

Pleas

8. If a defendant is going to enter a guilty plea which is acceptable to the Crown, the court should be notified forthwith, and any warned case for that date put on notice to proceed. Where a plea is possible but still under consideration, the Court should be put on notice, so that any warned cases can be kept on stand-by until a decision is made.

¹ i.e. in Form 38 in Appendix A to the Rules of the Supreme Court 1985, or some similar form, headed with the title and number of the criminal case.

Failure to Appear

9. If a defendant fails to appear on the date fixed for trial, the jury should be stood over for one day, while every effort is made to locate the missing defendant or a warned case prepared to go in its stead.

Overseas Counsel

10. The pool of available overseas counsel is very large. Overseas counsel should be chosen who are available for the fixture. Cases will not be adjourned for their convenience. In the case of overseas counsel becoming unavailable close to the date, another should be substituted. Save in an emergency, however, the application to admit overseas counsel should be made far enough in advance to allow for proper consideration by the Court, the Department of Immigration and by the Bar Council (in the performance of its duty to advise the Department of Immigration in relation to any application for a work permit).

Co-operation

11. Successful listing is a co-operative venture. The aim is to get the matter tried as soon as practicable. To this end, counsel should return each other's calls, and answer correspondence promptly.

Dated this 18th day of May 2004

Richard W. Ground OBE QC
Chief Justice